STAMFORD HOLDINGS SDN. BHD.

v.

KERAJAAN NEGERI JOHOR & 4 ORS.

HIGH COURT MALAYA, JOHOR BAHRU
DATO' MOHD. GHAZALI BIN MOHD. YUSOFF JC
[CIVIL SUIT NO. 22-67-1995]
14 APRIL 1995

***PRACTICE & PROCEDURE**: Statement of claim - Application to strike out - Whether reasonable cause of action disclosed - Oral evidence - Whether admissible - Order 18 r. 19 RHC 1980.*

***ADMINISTRATIVE LAW**: Declaratory judgment - Whether an aids to the doing of justice in private law - Whether limited to legal or equitable rights - Whether extending to moral, social and political matters - Whether capable of being introduced into public administrative law - Order 15 r. 16 RHC 1980.*

***LAND LAW**: Land acquisition - Compensation - Adequacy - Plaintiff seeking to establish liability of State Authority - Proper defendant - Whether State Government a proper defendant - State authority - Whether synonymous with State Government - Whether plaintiff ought to sue the Land Administrator in the name of his office - Land Acquisition Act 1960.*

***LAND LAW:** Land acquisition - Acquisition by State Authority on behalf of statutory body - Whether irregular - Whether statutory body eligible in law to pursue acquisition of private land - Land Acquisition Act 1960 ss. 3 & 4 - Johore State Islamic Economic Development Corporation Enactment 1976, s. 3.*

***TORT**: Conspiracy - Prerequisites - Whether there was mala fide - Whether overt acts had caused damage to plaintiff.*

The plaintiff was the owner of some 6600 acres of land in Johore. On 17 February 1994 a preliminary notice was issued by the Land Administrator under s. 4 of the Land Acquisition Act 1960 (LAA) notifying the plaintiff that the said land was likely to be acquired by the State Authority. Subsequently on 7 July 1994 a notice under s. 8 of the Act was issued notifying plaintiff that the said land was to be acquired for a public purpose. The public purpose stated was that the land was to be acquired for a statutory body, namely, the Johore State Islamic Economic Development Corporation (JSIEDC), the fifth defendant herein.

The facts show that prior to the publication of the preliminary notice under s. 4 aforesaid, the 3rd and 4th defendants had approached the plaintiff proposing to develop the land on a joint-venture basis with the plaintiff. In consequence several meetings were held between the parties, in one of which, the 2nd defendant, the Mentri Besar of Johore, was also present. The plaintiff however could not agree to some of the proposed terms whereupon the 3rd and 4th defendants, who were close associates of the 2nd defendant, began to issue threats to the effect that the said land might be acquired at not very favourable compensation. The plaintiff did not capitulate and the result was that the negotiation had come to a stalemate.

It was under these circumstances that the two notices aforesaid came to be issued by the Land Administrator. The plaintiff filed a writ action against the defendants and applied for a declaration that the whole acquisition exercise by the Land Administrator was ultra vires the LAA and the Federal Constitution. The Land Administrator, for reasons known only to the plaintiff, was however not named as a defendant.

In their statement of claim the plaintiff alleged that the 2nd, 3rd and 4th defendants had unlawfully conspired to deprive the plaintiff of its land by abusing the provisions of the LAA as well as the executive authority of the 1st and 2nd defendants. This apart, the plaintiff also questioned the validity of the JSIEDC Enactment 1976, which established the JSIEDC, and maintained that the JSIEDC is not a body entitled to invoke s. 3 of the LAA or pursue acquisition of private landed property.

The defendants applied to strike out the plaintiff's claim alleging that the same was devoid of any or any reasonable cause of action.

Held:

[1] The plaintiff is not in a position to question the validity of the JSIEDC Enactment as leave of the Federal Court for the purpose, as required by Art. 4(4) of the Federal Constitution, has not been produced.

[2] Reading the JSIEDC Enactment as a whole, it is clear that the JSIEDC is entitled to invoke s. 3 of the LAA for the purpose of acquiring private landed property and there has never been a misconstruction of the purpose and the policy set out in the said s. 3 as alleged. There is no impediment to the acquisition and that being so, there is no cause of action against the 5th defendant.

[3] The overt acts of the 2nd defendant, carried out purportedly in pursuance of the alleged conspiracy, only relate to the giving of instructions to his subordinate officers to publish in the Gazette the various statutory notices and declarations pursuant to the provisions of the LAA and the commencement of the enquiry by the Land Administrator to assess the amount of compensation to be paid to the plaintiff as the landowner. These are lawful acts and are made pursuant to the provisions of the LAA for a lawful object.

[4] In the tort of conspiracy there is a need for the plaintiff to show the overt acts which caused the damage. None of the paragraphs in the statement of claim herein containing the averments of the avert acts of the 2nd, 3rd and 4th defendants show that as a result of these acts, the plaintiff had suffered damage. It is clear that the plaintiff had not suffered any damage as he had not submitted to the demands of the said defendants. That being the case conspiracy could not lie.

[5] The declaration in Form D which was published in the Gazette on 7 July 1994, reveals that a total of 30 pieces of land with separate titles and belonging to eight different landowners, one of whom was the plaintiff, formed the subject-matter of that declaration under s. 8 of the LAA. Under such circumstances, no ulterior motive could be attributed to the second defendant as alleged by the plaintiff.

[6] The State Government has nothing to do with these proceedings. It is the State Authority, which would mean the Ruler, that is the pertinent entity. If the plaintiff sought to establish liability against the State Authority, it is the Land Administrator in the name of his office that ought to be named as defendant. The provisions of the LAA show that it is the Land Administrator who issues notices, takes possession of acquired land, conducts enquiries and so on. He acts in the name of the State Authority and upon instruction of the State Authority. That being so, the State Government of Johore should never have been joined in these proceedings. Legally the State Authority cannot be considered to be synonymous with the State Government. They are separate entities as far as the provisions of the LAA are concerned.

[7] A declaratory judgment is an equitable remedy, it is wrong to introduce into public administrative law concepts such as declarations which are essentially aids to the doing of justice in private law. The Court's power to make declaratory judgments is confined to matters justifiable in the Courts, and the binding declarations which it can make under O. 15 r. 16 of the Rules of the High Court, 1980 are limited to legal or equitable rights and do not extend to moral, social or political matters.

[Application allowed. Statement of claim struck out].

Cases referred to:

Attorney-General of the Duchy of Lancaster v. London and North Western Railway Company [1892] 3 Ch. 274 ***(foll)***

Wenlock v. Moloney [1965] 1 WLR 1238 ***(cit)***

Yew Lean Finance Development (M) Sdn. Bhd. v. Director of Lands & Mines, Penang [1977] 2 MLJ 45 ***(cit)***

Ng Chee Keong & 3 Ors. v. Lembaga Letrik Negara & Anor. [1991] 1 CLJ 567 ***(foll)***

Yeap Seok Pen v. Government of State of Kelantan [1982] 2 MLJ 202 ***(foll)***

Marrinan v. Vibart [1962] 1 All ER 869 ***(foll)***

Davies v. Thomas [1920] 2 Ch 189 ***(foll)***

Sorrel v. Smith [1925] AC 700 ***(foll)***

PP v. Datuk Haji Harun bin Haji Idris (No. 2) [1977] 1 MLJ 15 ***(foll)***

J.T. Stratford & Son Ltd. v. Lindley & Ors. [1964] 2 All ER 209 ***(foll)***

Malone v. Metropolitan Police Commissioner [1979] 1 Ch 344 ***(foll)***

Legislation referred to:

Evidence Act s. 37(c)(i)

Federal Constitution, Art. 13(1)

Incorporation (State Legislatures Competency) Act 1962, ss. 3, 5 & 8

Incorporation (State Legislatures Competency) (Amendment of First Schedule) Order, 1974

Johore State Islamic Economic Development Corporation Enactment, 1976 s. 3

Land Acquisition Act 1960 ss. 3, 4

Rules of High Court 1980, Ors. 15 r. 6, 18 r. 19(1)(a)

Specific Relief Act 1950 s. 8

Other sources referred to:

Halsbury's Laws of England, 4th Edn., Vol. 45, p. 271

Mallal's Supreme Court Practice Vol. 1, 2nd Edn., p. 219

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For the 1st and 2nd defendants - Abdul Alim Abdullah, State Legal Adviser, Johore

For the 3rd and 4th defendants - Yusuf Khan Ghows Khan (M. Pathmanathan with him); M/s Yusuf Lee Pathma & Marbeck

For the 5th defendant - Nik Saghir bin Mohd. Noor (Roger Tan & Chin Yew Meng with him); M/s. Nik Saghir & Ismail

For the watching brief's 2nd defendant - Zaki Tun Azmi; M/s. Rashid & Lee

JUDGMENT

Mohd. Ghazali bin Mohd. Yusoff JC:

The defendants to this action have filed three similar applications respectively (encl. 21, 24 and 26) under O. 18, r. 19(1)(a) of the Rules of the High Court 1980, requesting that the statement of claim, attached to the writ of summons filed by the plaintiff on 4 February 1995 against them, be struck out on the ground that it discloses no reasonable cause of action.

In its statement of claim, the plaintiff, a locally incorporated company, is praying for the following declarations, namely:

(a) a declaration that the 5th defendant, the Perbadanan Kemajuan Ekonomi Islam Negeri Johor, is not a body or person entitled to invoke s. 3 of the Land Acquisition Act 1960 for the purpose of acquiring private landed property;

(b) in the alternative a declaration that the purported exercise to acquire the plaintiff's land initiated by the 5th defendant is a misconstruction of the purpose and the policy set out by s. 3 of the Land Acquisition Act 1960;

(c) a declaration that the purported acquisition exercise set in motion by the 1st defendant at the behest of the 2nd defendant to acquire the plaintiff's land is motivated by vengeance, bad faith and a desire to teach the plaintiff and its directors and shareholders a lesson and to punish them by depriving them of their property by unconstitutional means and accordingly is outside Art. 13(1) of the Constitution read together with s. 3 of the Land Acquisition Act 1960 and is therefore null and void and inoperative;

(d) judgment for damages for conspiracy against the 2nd, 3rd and 4th defendants;

(e) an order that the Deputy Registrar assess damages for conspiracy against the 2nd, 3rd and 4th defendants and such damages as quantified by the Deputy Registrar be paid forthwith by the 2nd, 3rd and 4th defendants together with interest thereon;

(f) an order that the defendants pay the costs of this suit and the 2nd, 3rd and 4th defendants pay the costs of assessment of damages by the Deputy Registrar;

(g) any other relief that the Court deems fit as a consequential relief or otherwise.

Order 18, r. 19(1)(a) of the Rules reads:

(1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement, of any writ in the action, or anything in any pleading or in the indorsement, on the ground that:

(a) it discloses no reasonable cause of action or defence, as the case may be;

and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

(2) No evidence shall be admissible on an application under para. (1)(a).

With regard to O. 18, r. 19(1)(a) the commentary in *Mallal's Supreme Court Practice* - Vol. 1 (2nd Edn.,) by Chang Min Tat (at p. 219) reads:

> This rule enforces the rules of pleading. The Court has the power (1) in a summary manner, i.e., without trial, to stay or dismiss an action or enter judgment accordingly where the pleading discloses no reasonable cause of action or defence,....
>
> In an application to strike out under this rule, no evidence is admissible, para. (2).

It was held in *Attorney-General of the Duchy of Lancaster v. London and North Western Railway Company* [1892] 3 Ch. 274 that where the only ground on which to strike out the application is made is that the pleading discloses no reasonable cause of action, no evidence is admitted. Similarly, in *Wenlock v. Moloney* [1965] 1 WLR 1238 the Court held that where the only ground on which the statement of claim can be said to disclose no reasonable cause of action is that the action is unlikely to succeed, affidavit evidence is equally inadmissible.

The summary procedure to strike out under the Rule can only be adopted when it can be clearly seen that the claim or answer, is on the face of it "obviously unsustainable" (see *Attorney-General of the Duchy of Lancaster v. London and North Western Railway Company*).

In considering the applications before me, which were heard on 30 and 31 March 1995, I had kept in the forefront of my mind the above principles.

The only document that can be referred would be the pleadings, namely, the statement of claim accompanying the writ. In its statement of claim the plaintiff alleged that the 2nd defendant, who is the Menteri Besar of the State of Johore and the "Chief Executive Officer" of the 1st defendant, the State Government of Johore, and the 3rd and 4th defendants, who are businessmen and close associates of the 2nd defendant, have unlawfully conspired to deprive the plaintiff of its land by abusing the provisions of the Land Acquisition Act 1960 and the executive authority of the 1st defendant to acquire the plaintiff's land for the 5th defendant, a statutory body.

It was also alleged that the 1st defendant who was completely under the control and power of the 2nd defendant was manipulated by the latter and that the 5th defendant is not a body entitled to pursue acquisition of private land pursuant to s. 3 of the Land Acquisition Act 1960 (hereafter referred to as "the LAA").

The plaintiff alleged that prior to the publication of the preliminary notice under s. 4 of the LAA notifying that the plaintiff's land, amounting to 6,600 acres and held under several titles, is likely to be acquired, the 3rd and 4th defendants approached the plaintiff with a proposal to develop the plaintiff's land. As a result of this, both parties agreed that for this purpose a joint-venture company will be incorporated to act as a vehicle for the proposed development. The plaintiff's terms, namely, that it is to hold 70% of the equity in the proposed joint-venture company and that the said land is to be sold to the proposed company at RM70,000 per acre were however not agreed to by the 3rd and 4th defendants.

The plaintiff also alleged that several meetings were held between them and that on one occasion, the 2nd defendant was also in attendance. It was further alleged that because of the stalemate, the 3rd and 4th defendants began to issue threats to the effect that the said land may be acquired at not very favourable compensation. The 3rd defendant then advised the plaintiff to accept RM30,000 to RM35,000 per acre for sale to the proposed joint-venture company, but the plaintiff did not agree.

The plaintiff then alleged that on 31 December 1992 the 2nd defendant caused his subordinate officers to issue a preliminary notice under s. 4 of the LAA which however lapsed after 12 months, and on 17 February 1994, unlawfully and maliciously and in vengeance caused another preliminary notice under the said s. 4 to be published in the *Gazette* and subsequently, on 7 July 1994, unlawfully and maliciously and in vengeance caused to be published in the *Gazette* a declaration under s. 8 of the LAA that the said land is required for a public purpose, namely, that the land is to be acquired on behalf of the 5th defendant.

The plaintiff further alleged:

(i) that the act of the 1st, 2nd and 5th defendants constitutes an unconstitutional means of depriving the plaintiff of its property and is void and inoperative;

(ii) that the 5th defendant has misconstrued its statutory powers;

(iii) that the act of the 1st defendant done at the instigation of the 2nd defendant, working in league with his co-conspirators, the 3rd and 4th defendants, was done for the purpose of teaching the plaintiff a lesson and punishing the plaintiff; it was an act of bad faith;

(iv) the act of the defendants was done collectively and collusively by them as an act of vengeance against the plaintiff for not submitting to the unjust demands of the 2nd, 3rd and 4th defendants of 70% control of the proposed joint-venture company and the sale price of RM30,000 per acre of the plaintiff's land;

(v) that the plaintiff has suffered loss and damage.

I shall firstly take the case of the 5th defendant who forms the subject-matter of the first and second declarations sought by the plaintiff. The plaintiff has alleged that the 5th defendant is not a body entitled to invoke s. 3 of the LAA for the purpose of acquiring private landed property and in the alternative, that the purported exercise to acquire the plaintiff's land is a misconstruction of the purpose and policy set out by s. 3 of the LAA.

In opposing these applications to strike out, the plaintiff's Counsel argued that the provisions of the Johore State Islamic Economic Development Corporation Enactment, 1976 are contrary to the Incorporation (State Legislatures Competency) Act 1962 (hereinafter referred to as the Competency Act"), and as such he is challenging the legality of the corporation.

The 5th defendant, the Johor State Islamic Economic Development Corporation (hereafter referred to as "the JSIEDC"), was established by the said Enactment which came into force on 7 May 1976. Section 3 of the Enactment provides that the JSIEDC can enter into contracts and to **acquire,** purchase, take, hold and enjoy movable and immovable property to every description and to convey, assign, surrender, yield-up, charge, mortgage, demise, re-assign, transfer and otherwise dispose of or deal with any movable or immovable property or any interest therein vested in the Corporation on such terms as the Corporation may deem fit.

Section 27(1) of the Enactment provides:

> When any immovable property, not being State land, is needed to be **acquired** by the Corporation for the purposes of this Enactment, such property may be **acquired** in accordance with the provisions of any written law relating to the **acquisition** of land for a public purpose for the time being in force in the State in which such property is situated, and any declaration required under any such written law that such land is so needed may be made notwithstanding that compensation is to be paid out of the Fund, and such declaration shall have effect as if it were a declaration that such land is needed for a public purpose in accordance with such written law.

As stated earlier, the plaintiff is challenging the legality of the JSIEDC. Counsel for the plaintiff argued that certain provisions appearing in the Second Schedule to the Competency Act which have to be incorporated in the JSIEDC Enactment cannot be found in that Enactment, namely, ss. 3, 5 and 8 of the Second Schedule to the Competency Act.

Section 3 of the Competency Act reads:

> It shall be within the power of the Legislature of a State, in relation to any matter specified in the First Schedule, to make laws with respect to the incorporation of any person or body within the State, and for such incidental and consequential matters in relation thereto (including the regulation and winding up of any person or body so incorporated) as the Legislature may deem necessary; and the Legislature may from time to time amend or repeal any such laws:
>
> Provided that with respect to the incorporation of any person or body within the State for the purpose of agricultural development or housing development or of development of urban or rural areas, the special provisions prescribed in the Second Schedule hereto shall have effect.

Section 3A of the Competency Act reads:

> Notwithstanding the proviso to s. 3, the special provisions prescribed in the Second Schedule, except para. 2 thereof, shall also have effect with respect to Corporations established within the State for the purpose of agricultural development or housing development or of development of urban or rural area before the coming into force of that Schedule.

From the above provisions it is clear that if a State Legislature incorporates a person or body for the purpose of agricultural development or housing development or development of urban or housing development or development of urban or rural areas, then the special provisions found in the Second Schedule shall have effect, whether it was incorporated before or after the coming into force of that Schedule. It must be noted that s. 3A was inserted by the Incorporation (State Legislatures Competency) (Amendment) Act 1976 (Act A351) which appeared in the *Gazette* on 31 May 1976.

Section 3 of the Second Schedule provides that a State law establishing any corporation shall provide for the corporation to be subject to any direction of the Minister. Section 5 provides that there shall be appointed by the Minister three representatives of the Federal Government as members of the corporation and s. 8 provides that the quorum of the corporation at any meeting shall be at least half of the members of the corporation with at least one member of the Federal Government being present.

The plaintiff's Counsel argued that since the above provisions of the Second Schedule do not appear in the JSIEDC Enactment, the legality of the JSIEDC is suspect and as such is a serious question to be tried and that this discloses that there is a cause of action.

I cannot see how the above contention can hold water. Section 3 of the Competency Act gives power to the State Legislature of Johore to make laws with respect to any person or body in relation to any matter specified in the First Schedule of the Competency Act which includes the "Economic and social development of the Muslim community" (item 12, First Schedule).

Item 12 was inserted in the First Schedule by the Incorporation (State Legislatures Competency) (Amendment of First Schedule) Order, 1974, which was dated 16 December 1974, and which appeared in the *Gazette* (P.U.(A) 448); the amendment is deemed to have to come into force on 1 April 1974. The JSIEDC Enactment establishing the corporation came into force on 7 May 1976. Thus, it is clear that the State Legislature of Johore did have such power to incorporate the JSIEDC in 1976.

The question which has arisen is whether the provisions prescribed in the Second Schedule to the Competency Act need to be incorporated into the JSIEDC Enactment. Part IV of the Enactment contains several provisions providing for the duties and power of the corporation; s. 18(1) which is found under the said Part IV provides:

> It shall be the duty of the Corporation to promote, stimulate, facilitate and undertake land development in the State of Johore for purposes of the development of the Islamic religion and for agricultural, residential, industrial, mining and commercial development.

I cannot see how such a provision can evoke the necessity for the JSIEDC Enactment to include the provisions prescribed in the Second Schedule to the Competency Act. The JSIEDC was established for the sole purpose of the economic and social development of the Muslim community and not for the purpose of agricultural development or housing development, etc. From my reading of the JSIEDC Enactment as a whole, its power to undertake land development is merely an incidental and consequential matter but is not the sole purpose for which it was established. Under s. 28 of the Enactment a Fund is established and this fund is to be administered and controlled by the corporation itself. The fund shall consist of such sums paid or allocated or donated by the State Government, or any Government in the Federation or by any other person and also sums allocated or entrusted from the Johore Muslim Trust Fund, Zakat Fund, the Funds of Baitul-Mal and the Wakaf Trust Fund. The JSIEDC has several other incidental and consequential powers which includes power to invest its funds, power to borrow, and power to employ agents and these are to be carried out for the purpose of the economic and social development of the Muslim community. It is, what is commonly termed, a government trust agency. Section 20 of the Enactment allows the corporation to enter into any arrangement with other Government agencies and s. 21 allows the corporation to promote any company or companies for the purposes which may directly or indirectly benefit the corporation, including the acquiring of property.

That being so, I cannot see how the said provisions of the Second Schedule to the Competency Act need to be incorporated in the JSIEDC Enactment. Section 1 of the Second Schedule provides that in this Schedule, "corporation" means a corporation established under s. 3 for the purpose of agricultural development or housing development or development of urban or rural areas. I do not think the JSIEDC is such a corporation. Even if it is such a corporation, as suggested by Counsel for the plaintiff, a question which has arisen is whether the plaintiff is in a position to raise such an issue, namely, to question the legality of the JSIEDC and simultaneously, the validity of the JSIEDC Enactment.

Article 4 of the Federal Constitution provides:

> (3) The validity of any law made by ... the Legislature of any State shall not be questioned on the ground that it makes provision with respect to any matter with respect to which ... the Legislature of the State has no power to make laws, except in proceedings for a declaration that the law is invalid on that ground or:
>
> (a) ... ;
>
> (b) if the law was made by the Legislature of a State, in proceedings between the Federation and that State.
>
> (4) Proceedings for a declaration that a law is invalid on the ground mentioned in cl. (3) (not being proceedings falling within para. (a) or (b) of the Clause) shall not be commenced without the leave of a Judge of the Mahkamah Persekutuan.

Looking at the above constitutional provisions, it is clear that the plaintiff, under the circumstances, is definitely not in a position to question the validity of the JSIEDC Enactment; he has not produced such leave.

In opposing the application the plaintiff has also contended that JSIEDC has no power to acquire land and is not a person or body contemplated by s. 3 of the LAA. I see no merit in this argument. Section 3 of the LAA reads:

> The State Authority may acquire any land which is needed:
>
> (a) for any public purpose;
>
> (b) by any person or corporation for any purpose which in the opinion of the State Authority is beneficial to the economic development of Malaysia or any part thereof or to the public generally or any class of the public;
>
> or
>
> (c) for the purpose of mining or for residential, agricultural, commercial or industrial purposes.

As mentioned earlier, s. 3 of the JSIEDC Enactment provides that the corporation may acquire immovable property and s. 27(1) of the said Enactment provides that the corporation may acquire any immovable property which is needed for its purpose. Its purpose would definitely be a public purpose as any land acquired have to be used for the economic and social development of the Muslim community. This section has to be read together with s. 3(b) of the LAA which provides that the State Authority may acquire any land which is needed by a corporation for any purpose which in the opinion of the State Authority is beneficial to the economic development of any class of the public - the words "any class of the public" would surely encompass the Muslim community.

Be that as it may, s. 8(3) of the LAA provides that "A declaration in Form D shall be conclusive evidence that all the scheduled land referred to therein is needed for the purpose specified therein" and several authorities confirm that the State Authority is the sole authority under the LAA who decides what is and what is not a public purpose. In *Yew Lean Finance Development (M) Sdn. Bhd. v. Director of Lands & Mines, Penang* [1977] 2 MLJ 45, the plaintiffs contended, *inter alia*, that the lands in question were being acquired for some vague purpose and therefore the notice of intended acquisition was null and void and that as a result of the wrongful acquisition the plaintiffs suffered damage. In dismissing the suit, the Court held that the Government was the sole authority to decide what is, or, what is not, a public purpose, and the decision by the Government in this respect could not be questioned by a civil Court.

In the instant case the declaration in Form D as provided for under s. 8 of the LAA was published in the *Gazette* on 7 July 1994 and it reads that the lands stated therein are needed for:

> Cadangan Pembangunan Kawasan Ladang Mount Austin Oleh Perbadanan Kemajuan Ekonomi Islam Negri Johor.

The declaration shows that 30 pieces of land held under separate titles belonging to 8 different landowners, out of which the plaintiff is one, are needed for the said purpose.

Incidentally, Counsel for the plaintiff objected to any kind of reference being made to the above *Gazette* notification: he argued that this declaration is evidence and hence inadmissible by virtue of O. 18, r. 19(2) of the Rules. With respect I cannot see any merit in this argument. The plaintiff has referred to this declaration in his statement of claim. Furthermore s. 37(c)(i) of the Evidence Act (read together with s. 57 of the same Act) provides, *inter alia*, when the Court has to form an opinion as to the existence of any fact of a public nature any statement of it made in a recital contained in any printed paper purporting to be the *Gazette*

printed under the authority of the Government of any State is a relevant fact, and is a fact of which the Court shall take judicial notice. To me the said declaration as published in the *Gazette* is not evidence but a fact which the Court has to take judicial notice.

In my view, the JSIEDC is clearly a body which is entitled to invoke s. 3 of the LAA for the purpose of acquiring private landed property and there has never been a misconstruction of the purpose and the policy set out in the said s. 3 as alleged. I can see no impediment to the acquisition and that being so, I cannot see any cause of action against the 5th defendant.

The third declaration sought by the plaintiff can be set out as follows, namely, that the purported acquisition set in motion by the 1st defendant at the behest of the 2nd defendant to acquire the plaintiff's land:

(i) is motivated by vengeance, bad faith and a desire to teach the plaintiff (including its directors and shareholders) a lesson;

(ii) is to punish the plaintiff by depriving it of its property by unconstitutional means and accordingly is outside Art. 13(1) of the Federal Constitution read together with s. 3 of the LAA; and

(iii) is therefore null and void and inoperative.

The averments made in the statement of claim surrounding the third declaration sought by the plaintiff centres on an alleged tort of conspiracy committed by the 2nd, 3rd and 4th defendants. The plaintiff alleged that the 3rd and 4th defendants had issued threats against the plaintiff that its land will be acquired if it did not agree to their terms. It seems that when the terms proposed by them were not agreed to by the plaintiff, these two defendants unlawfully conspired with the 2nd defendant who is "the Chief Executive Officer of the 1st defendant" (according to para. 3 of the statement of claim) to manipulate the powers of the 1st defendant "who is completely under the power and control of the 2nd defendant" to deprive the plaintiff of its property by acquiring its land and that the 5th defendant was made a vehicle, and as a result of which the plaintiff suffered loss and damage. In other words, the acquisition was *mala fide.*

It is settled law that the validity of an acquisition cannot be challenged. As stated earlier, s. 8(1) of the LAA provides that when the State Authority decides that a piece of land is needed for any of the purposes referred to in s. 3, a declaration in Form D shall be published in the *Gazette* and s. 8(3) provides that the declaration in Form D "shall be conclusive evidence that all the scheduled land referred to therein is needed for the purpose specified therein."

In *Ng Chee Keong & 3 Ors. v. Lembaga Letrik Negara & Anor.* [1991] 1 CLJ 567, the plaintiffs filed a writ against the defendants for trespass over land which has been the subject of a land acquisition. The first defendant applied for striking out of the writ on the ground that the statement of claim did not disclose any form of action. In his judgment, Lim Beng Choon J said (at p. 569) that the cause of action of the plaintiffs are solely anchored on the tortious act of trespassing on the part of the defendants on the portion of land in question; he held that "if the plaintiffs were challenging the validity of the acquisition they are precluded from doing so by a writ action because under the provisions of the Land Acquisition Act the only matters that can be litigated by the Court are limited to matters as prescribed in Part V of the said Act ...". At p. 570, the Judge said:

Section 8(3) of the Specific Relief Act 1950 fortifies the proposition that a writ action cannot be brought to challenge the validity of a compulsory acquisition proceeding. In whatever ways one may consider the case for the plaintiffs, one can have no doubt that firstly there is no cause of action raised in the statement of claim and (2) even if there is a cause of action the plaintiffs are in fact asking for reliefs which this Court has no power to grant.

Section 8 of the Specific Relief Act 1950 (Revised-1974) provides:

(1) If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in the suit.

(3) No suit under this section shall be brought against any Government in Malaysia.

In *Yeap Seok Pen v. Government of State of Kelantan* [1982] 2 MLJ 202, two issues were raised, namely, whether the declaration under s. 8 of the said Act was valid and whether the State Government acted *mala fide* when acquiring the property.

In that case, the Kelantan State Government had published a declaration in Form D under s. 8 of the LAA saying that the appellant's land, upon which there was a shophouse, was needed for the purpose of office and commercial space for the Kelantan Foundation, a statutory corporation. The appellant had bought the said property and was having some problems registering the transfer when the declaration was issued. (Section 19(1) of the Enactment establishing the Kelantan Foundation is similar to s. 27(1) of the JSIEDC Enactment).

Suffian LP said that the declaration was good in accordance with s. 8(3) of the LAA and said that the decision that the land is required for a public purpose is not open to challenge. On the issue of *mala fide*, the appellant argued that there were several other shop-houses in the same row but hers was singled out for the acquisition. She alleged that the real reason was not to use it for the purpose of the Kelantan Foundation but to prevent it from falling into the hands of a non-Malay purchaser. The Federal Court agreed with the trial Judge that the fact that other properties were available is not enough to prove that the State Government had acted *mala fide* when it acquired the property.

In the instant case, the plaintiff alleged that the acquisition was *mala fide* as the 2nd, 3rd and 4th defendants have conspired to deprive the plaintiff of its property by setting the acquisition process into motion. The plaintiff alleged that prior to the acquisition, the 3rd and 4th defendants, who are close associates of the 2nd defendant, issued threats that the 2nd defendant will acquire its land in the event it did not agree to their terms.

According to decided authorities, to establish a tort of conspiracy, there must be an agreement plus the overt acts which are alleged to have been done by each of the alleged conspirators in pursuance of the conspiracy, and lastly, the injury and damage occasioned to the plaintiff thereby.

In *Marrinan v. Vibart* [1962] 1 ALL ER 869 at p. 871, Salmon J said:

the gist of the tort of conspiracy is not the conspiratorial agreement alone, but that agreement plus the overt act causing damage.

The tort of conspiracy, however, is complete only if the agreement is carried into effect so as to damage the plaintiff.

As to what are the essential ingredients of conspiracy, *Halsbury's Laws of England* (4th Edn.,) Vol. 45 (at p. 271) reads:

> In order to make out a case of conspiracy the plaintiff must establish (1) an agreement between two or more persons, (2) an agreement for the purpose of injuring the plaintiff, and (3) that acts done in execution of that agreement resulted in damage to the plaintiff.

In *Davies v. Thomas* [1920] 2 Ch 189, Warrington LJ said:

> That is to say, to be a conspiracy ... it must be an unlawful object, that is, the act which it is intended to bring about must in itself unlawful, or, if not in itself unlawful, then it must be brought about by unlawful means.

From my reading of paras. 38 and 41 of the statement of claim, the overt acts of the 2nd defendant carried out in pursuance of the conspiracy only relate to the giving of instructions to his subordinate officers to publish in the *Gazette* the various statutory notices and declarations pursuant to the provisions of the LAA and the commencement of the enquiry by the Land Administrator to assess the amount of compensation to be paid to the plaintiff as the landowner.

These are lawful acts and are made pursuant to the provisions of the LAA for a lawful object. As to how they can be termed or be referred to as unlawful acts in the statement of claim escapes me. In *Sorrel v. Smith* [1925] AC 700, Lord Dunedin held that an act that is legal in itself will not be made illegal because the motive of the act is bad. The plaintiff has alleged that the motive of the 2nd defendant with regard to the acquisition was to teach the plaintiff a lesson. Was there actually such a motive? The declaration in Form D which was published in the *Gazette* on 7 July 1994, referred to earlier, reveals that a total of 30 pieces of land with separate titles and belonging to eight (8) different landowners, one of whom was the plaintiff, formed the subject-matter of that declaration under s. 8 of the LAA. Under such circumstances, I cannot see such motive as alleged by the plaintiff.

Section 3 of the LAA provides that it is the State Authority who is the body which determines whether an alienated piece of land should be acquired. Who is the State Authority? According to s. 2 of the LAA the "State Authority" means the Ruler of the Yang di-Pertua Negeri of the State, as the case may require. However the plaintiff seems to be of the view that the State Government of Johore and the State Authority is synonymous as he has named the State Government of Johore as the 1st defendant. From my reading of the provisions of the LAA, the State Government as such has nothing to do with these proceedings. It is the State Authority that is the pertinent entity, which would mean the Ruler. In my view, if it is sought to establish liability against the State Authority, it should be the Land Administrator in the name of his office. The provisions of the LAA shows that it is the Land Administrator who issues notices, takes possession of acquired land, conducts enquiries and so on. He acts in the name of the State Authority and upon instructions of the State Authority. That being so, I am of the view that the State Government of Johore should never have been joined in these proceedings. Legally, I cannot see how the State Authority can be considered to be synonymous with the State Government. They are separate entities as far as the provisions of the LAA are concerned.

There appears to be a popular misconception on this aspect of the matter and on the role of the Government of a State as such in relation to the LAA with the resultant indiscriminate joinder of State Governments as parties in proceedings thereunder. As stated by Raja Azlan Shah FJ in *PP v. Datuk Haji Harun bin Haji Idris* (No. 2) [1977] 1 MLJ 15, at p. 20:

> It is the Executive Council who is the executive organ of the State Authority and exercise executive functions in the name of the Ruler.

Article II of the Second Part of the State Constitution of Johore provides:

> (1) The executive authority of the State shall be vested in the Ruler but executive functions may by law be conferred on other persons or authorities.
>
> (2) All executive authority of the State shall be expressed to be taken in the name of the Ruler.

Article VII provides in the exercise of his functions under this Constitution or any law, the Ruler shall act in accordance with the advice of the Executive Council (EXCO).

When the above provisions under the State Constitution are read together with the provisions of the LAA, it is clear that the EXCO is the body which determines under s. 3 of the LAA whether any alienated land should be acquired. As provided for under Art. IV of the State Constitution, the EXCO is collectively responsible to the State Legislative Assembly. Besides the Menteri Besar, there are eight (8) other members. There are also three (3) ex-officio members (Art. VI) who have a right to take part in the proceedings of the EXCO but shall not have any vote. A decision of the EXCO when exercising its executive function of the Ruler under the LAA would mean a collective decision. To allege that the 2nd defendant was in a position to abuse and manipulate the EXCO would, I think, necessitate averments containing specific acts or conduct of the 2nd defendant as to what had transpired when the EXCO deliberated on the proposed acquisition of the plaintiff's land rather than averments based on mere assumptions that there was manipulation and abuse of power by the 2nd defendant. That being non-existent in the statement of claim, I cannot see the unlawfulness of the overt acts of the 1st and 2nd defendants with regard to the acquisition.

The third ingredient of the tort of conspiracy, as discussed above, is that the plaintiff must state precisely the loss, injury or damage occasioned to him as a result of the agreement and overt acts. The question which has arisen in relation to this ingredient is, under the LAA, can a landowner whose land has been acquired claim that he has suffered loss, injury or damage?

Article 13(1) of the Federal Constitution provides:

> (1) No person shall be deprived of property save in accordance with law.
>
> (2) No law shall provide for the compulsory acquisition or use of property without **adequate compensation**.

Under the relevant provisions of the LAA, after the issuing of the declaration that the scheduled land is needed for any of the purposes under s. 3, the Land Administrator shall commence proceedings for the acquisition and fix a date of an inquiry for the hearing of

claims to compensation. He shall be required to make a full enquiry into the value and as soon as possible assess the amount of compensation. Upon conclusion of the enquiry he shall prepare a written award. Any landowner who is dissatisfied with the award by the Land Administrator may make objection to the amount of compensation awarded by requiring that he refer the matter to the Court for its determination.

Under the provisions of the First Schedule to the LAA the assessment for the award of compensation has to be based upon market value of the land and has to include any damage sustained or likely to be sustained under certain circumstances which is a result of the acquisition. However s. 3 of the First Schedule provides:

> In determining the amount of compensation to be awarded for any scheduled land acquired under this Act **the following matters shall not be taken into consideration**:
>
> (a) the degree of urgency which led to the acquisition;
>
> (b) any disinclination of the person interested to part with the land acquired;.

Looking at the above provisions, I cannot see how any person can complain that he has suffered any injury or damage if his land is acquired as the law provides that he will be adequately compensated. He will receive the market value for his land. If he disputes the compensation awarded, he has the right to refer the matter to Court. However his disinclination to part with the land is of course irrelevant and cannot be made the subject-matter of a suit against the State Authority.

Paragraph 41 of the statement of claim contains an averment of another overt act of the 2nd defendant, namely, the plaintiff had written to the 2nd defendant on 26 September 1994, that is, after the publication in the *Gazette* of the declaration in Form D on 7 July 1994, to cancel the acquisition but claims that the 2nd defendant refused to invoke his discretion under s. 35 of the LAA. Section 35(1) provides that "The State Authority shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken." With respect, I cannot see how the refusal to withdraw from an acquisition by the State Authority, which is a discretionary power, can be an unlawful act; I do not think I need to delve further into this issue.

In the tort of conspiracy there is a need for the plaintiff to show the overt acts which are the cause of his damage. It is my finding that none of the paragraphs in the statement of claim containing the averments of the overt acts of the 2nd, 3rd and 4th defendants show that as a result of these acts, the plaintiff has been damaged as it is clear that he never submitted to the demands of the said defendants. That being so, I cannot see how the tort of conspiracy can lie neither can I see the *mala fides* of the acquisition. In *J.T. Stratford & Son Ltd. v. Lindley & Ors.* [1964] 2 ALL ER 209, at p. 227, Salmon LJ said-

> As is made plain by Lord Devlin in *Rookes v. Barnard*, a threat cannot cause damage unless the person threatened yields to it. If he does not, and the threatened illegal act is carried out, it is that act and not the threat which causes the damage which may ensue. Accordingly, in my judgment, it is plain that, quite apart from any other consideration, the direct threat made to the plaintiffs affords them no cause of action, because they never yielded to it and, accordingly, the threat as a threat caused them no damage.;

and, at p. 228, said:

> A tort by definition is an actionable wrong causing damage. How can a wrong which is not actionable be unlawful as a tort?;

and at p. 229:

> Putting the problem in another way, it seems to me absurd that it should be unlawful to threaten to do an act which a statute allows you to do.

In this action, the statutory provisions of the LAA by themselves would appear to provide a complete answer and inhibit the interpolation of a tort of conspiracy in regard to the plaintiff's claim. A declaratory judgment is an equitable remedy and in my opinion it is wrong to introduce into public administrative law concepts such as declarations which are essentially aids to the doing of justice in private law. The Court's power to make declaratory judgments is confined to matters justiciable in the Courts, and the binding declarations which it can make under O. 15, r. 16 of the Rules of the High Court, 1980 are limited to legal or equitable rights and do not extend to moral, social or political matters (see *Malone v. Metropolitan Police Commissioner* [1979] 1 Ch 344, at p. 353). The plaintiff argued there is a necessity for a full trial. I disagree. The whole matter is comprehensive. The only issue is whether the statement of claim discloses a cause of action.

It is my decision that the statement of claim filed by the plaintiff discloses no reasonable cause of action against all the five defendants named in the writ. I will therefore allow the applications made by the defendants and grant an order in terms in respect of each of them, respectively, that is, encl. 21, 24 and 26, with costs.